

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 MUR 6944) DISMISSAL AND
6 Jose A. Farias) CASE CLOSURE UNDER THE
7 Aquiles J. Garza) ENFORCEMENT PRIORITY
8 Mario Bracamontes) SYSTEM
9 Arturo J. Cortez)
10 Integrated Border Services)
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15 **GENERAL COUNSEL'S REPORT**

16 Under the Enforcement Priority System, the Commission uses formal scoring criteria as a
17 basis to allocate its resources and decide which matters to pursue. These criteria include, without
18 limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into
19 account both the type of activity and the amount in violation; (2) the apparent impact the alleged
20 violation may have had on the electoral process; (3) the complexity of the legal issues raised in the
21 matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as
22 amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing
23 relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial
24 discretion to dismiss cases under certain circumstances.

25 The Office of General Counsel has scored MUR 6944 as a low-rated matter and has
26 determined that it should not be referred to the Alternative Dispute Resolution Office.¹ For the
27 reasons set forth below, the Office of General Counsel recommends that the Commission dismiss the

¹ The EPS rating information is as follows: Complaint Filed: June 18, 2015. Response from Jose A. Farias, Aquiles J. Garza, Mario Bracamontes, and Arturo J. Cortez Filed: July 21, 2015.

1 allegations that Jose A. Farias, Aquiles J. Garza, Mario Bracamontes, Arturo J. Cortez, (the
2 “Candidates”), and Integrated Border Services (“IBS”) violated the Act or Commission regulations.²

3 The Complaint alleges that the Candidates violated the Act and Commission regulations by
4 accepting a \$100 contribution from a foreign entity, IBS. Compl. at 1. The Complaint claims that
5 the Candidates’ disclosure reports filed with the City of Pharr, Texas, show that the \$100
6 contribution came from an address in Reynosa, Mexico.³ *Id.*

7 The Candidates acknowledged receiving IBS’s \$100 contribution on February 18, 2015,
8 and admit that the contribution check showed a Mexican address. Resp. at 1. The Candidates
9 argue that IBS is a Texas Limited Liability Company, and the funds were drawn from a United
10 States bank.⁴ *Id.* at 1, 3-4. They state that IBS has its registered address in Texas, and “like many
11 businesses in [the] border community,” it operates in both Texas and Mexico. *Id.* at 3-4. The
12 Candidates did not believe the contribution was prohibited, but refunded it on May 1, 2015, before
13 the Complaint was filed, “out of an abundance of caution.” *Id.* at 1, 4. The Candidates attached a
14 copy of the refund check issued to IBS, but not the contribution check itself.⁵ *Id.* at 6. IBS did not
15 file a response.

16 The Act and Commission regulations prohibit a foreign national from making a contribution
17 — directly or indirectly through any other person — in connection with an election to any political

² Jose A. Farias, Aquiles J. Garza, Mario Bracamontes, and Arturo J. Cortez were candidates for Mayor and City Commission in the May 9, 2015 municipal election in Pharr, Texas. Farias, Garza, Bracamontes, and Cortez ran collectively as the “Pharr First” ticket. Compl. at 1, Resp. at 1

³ The Complainant submitted campaign finance reports from the Candidates as attachments to the Complaint; the included reports list a \$100 contribution from IBS, received February 18, 2015. Compl., Attach. 1 at 16, 33, 50, 67.

⁴ The Response included a Certificate of Fact from the Office of the Secretary of State of Texas, certifying that IBS filed Articles of Organization as a domestic LLC in Texas in 2001, and that its registered address is in Hidalgo, Texas. *Id.* at 5.

⁵ The campaign finance reports that the Complainant submitted as a supplement to the Complaint list this \$100 payment made to IBS on May 1, 2015, under “Campaign Expenses.” Compl., Attach. 2 at 4, 12, 31, 37.

1 office.⁶ The term “foreign national” includes “a partnership, association, corporation, organization
2 or other combination of persons organized under the laws of or having its principal place of
3 business in a foreign country.”⁷ The Commission’s regulations further provide that a “foreign
4 national shall not direct, dictate, control, or directly or indirectly participate in the decision-making
5 process of any person . . . with regard to . . . election-related activities.”⁸ This prohibition includes
6 “decisions concerning the making of contributions, donations, expenditures, or disbursements.”⁹
7 The Act’s prohibition against contributions by foreign nationals applies to any election for political
8 office, including state and local offices.¹⁰ Additionally, the Act also prohibits persons from
9 knowingly soliciting, accepting, or receiving a contribution or donation from a foreign national.¹¹

10 The available information is insufficient to determine whether IBS is a foreign national
11 entity.¹² IBS is an LLC registered in Texas, however, it also operates in Mexico, and there is no
12 information, other than the Candidates’ assertion, that its registered office in Texas is its principal
13 place of business. Even if IBS is not a foreign national entity, there is no information indicating
14 whether foreign nationals participated in the decision to make the contribution. As to the
15 Candidates, the \$100 check they received bore a Mexican address, and they refunded the

⁶ 52 U.S.C. § 30121(a)(1)(A), (B); 11 C.F.R. § 110.20(b), (c).

⁷ 52 U.S.C. § 30121(b)(1); 22 U.S.C. § 611(b).

⁸ 11 C.F.R. § 110.20(i).

⁹ *Id.*

¹⁰ *United States v. Kanchanalak*, 192 F.3d 1037, 1049 (D.C. Cir. 1999) (concluding that the Commission has consistently interpreted 2 U.S.C. § 441e (now 52 U.S.C. § 30121) as applicable to federal, state, and local elections).

¹¹ See 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(a)(4), (g). The Commission’s regulations provide that “knowing” acceptance of a foreign national contribution in violation of the Act includes circumstances in which a person is “aware of facts that would lead a reasonable person to inquire whether the source of funds solicited, accepted or received is a foreign national, but the person failed to conduct a reasonable inquiry.” 11 C.F.R. § 110.20(a)(4)(iii). Here, the Respondents admit that the contribution check bore a Mexican address, which likely would have led a reasonable person to inquire whether the contributions came from a foreign national.

¹² IBS did not respond to the Complaint. See *supra*, footnote 4, Texas Secretary of State Certificate of Fact.

1 contribution about 70 days after they received it, several weeks before the Complaint was filed, but
2 apparently after the time provided for in the Commission's regulations.¹³

3 Under these circumstances, and in light of the *de minimis* amount at issue, and in
4 furtherance of the Commission's priorities relative to other matters pending on the Enforcement
5 docket, the Office of General Counsel believes that the Commission should exercise its
6 prosecutorial discretion and dismiss the allegations as to all Respondents, pursuant to *Heckler v.*
7 *Chaney*, 470 U.S. 821 (1985). The Office of General Counsel also recommends that the
8 Commission approve the attached Factual and Legal Analysis and the appropriate letters, and close
9 the file.

10 **RECOMMENDATIONS**

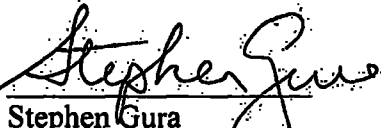
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12 1. Dismiss the allegation that Jose A. Farias, Aquiles J. Garza, Mario Bracamontes, Arturo
13 J. Cortez, or Integrated Border Services, violated 52 U.S.C. § 30121(a) and (b) and 11
14 C.F.R. § 110.20;
15
16 2. Approve the attached Factual and Legal Analysis and the appropriate letters; and
17
18 3. Close the file.

19 Lisa J. Stevenson
20 Acting General Counsel

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22 Kathleen M. Guith
23 Acting Associate General Counsel
24 for Enforcement

25
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27
28 10.18.16
29 Date

30 BY:

31 
32 Stephen Gura
33 Deputy Associate General Counsel
34 for Enforcement

¹³ See 11 C.F.R. § 103.3(b)(2).



Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration



Donald E. Campbell
Attorney
Complaints Examination and
Legal Administration

Attachment:
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Jose A. Farias

MUR 6944

Aquiles J. Garza

Mario Bracamontes

Arturo J. Cortez

Integrated Border Services

I. INTRODUCTION

This matter was generated by a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations by Jose A. Farias, Aquiles J. Garza, Mario Bracamontes, Arturo J. Cortez, (the "Candidates"), and Integrated Border Services ("IBS"). It was scored as a low-rated matter under the Enforcement Priority System, by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The Complaint alleges that the Candidates violated the Act and Commission regulations by accepting a \$100 contribution from a foreign entity, IBS. Compl. at 1. The Complaint claims that the Candidates' disclosure reports filed with the City of Pharr, Texas, show that the \$100 contribution came from an address in Reynosa, Mexico.¹ *Id.*

The Candidates acknowledged receiving IBS's \$100 contribution on February 18, 2015, and admit that the contribution check showed a Mexican address. Resp. at 1. The Candidates

¹ The Complainant submitted campaign finance reports from the Candidates as attachments to the Complaint; the included reports list a \$100 contribution from IBS, received February 18, 2015. Compl., Attach. 1 at 16, 33, 50, 67.

1 argue that IBS is a Texas Limited Liability Company, and the funds were drawn from a United
2 States bank.² *Id.* at 1, 3-4. They state that IBS has its registered address in Texas, and “like
3 many businesses in [the] border community,” it operates in both Texas and Mexico. *Id.* at 3-4.
4 The Candidates did not believe the contribution was prohibited, but refunded it on May 1, 2015,
5 before the Complaint was filed, “out of an abundance of caution.” *Id.* at 1, 4. The Candidates
6 attached a copy of the refund check issued to IBS, but not the contribution check itself.³ *Id.* at 6.
7 IBS did not file a response.

8 **B. Legal Analysis**

9 The Act and Commission regulations prohibit a foreign national from making a
10 contribution — directly or indirectly through any other person — in connection with an election
11 to any political office.⁴ The term “foreign national” includes “a partnership, association,
12 corporation, organization or other combination of persons organized under the laws of or having
13 its principal place of business in a foreign country.”⁵ The Commission’s regulations further
14 provide that a “foreign national shall not direct, dictate, control, or directly or indirectly
15 participate in the decision-making process of any person . . . with regard to . . . election-related
16 activities.”⁶ This prohibition includes “decisions concerning the making of contributions,
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³ The campaign finance reports that the Complainant submitted as a supplement to the Complaint list this \$100 payment made to IBS on May 1, 2015, under “Campaign Expenses.” Compl., Attach. 2 at 4, 12, 31, 37.

⁴ 52 U.S.C. § 30121(a)(1)(A), (B); 11 C.F.R. § 110.20(b), (c).

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⁷ *Id.*

foreign nationals applies to any election for political office, including state and local offices.⁸

Additionally, the Act also prohibits persons from knowingly soliciting, accepting, or receiving a contribution or donation from a foreign national.⁹

The available information is insufficient to determine whether IBS is a foreign national entity.¹⁰ IBS is an LLC registered in Texas, however, it also operates in Mexico, and there is no information, other than the Candidates' assertion, that its registered office in Texas is its principal place of business. Even if IBS is not a foreign national entity, there is no information indicating whether foreign nationals participated in the decision to make the contribution. As to the Candidates, the \$100 check they received bore a Mexican address, and they refunded the contribution about 70 days after they received it, several weeks before the Complaint was filed, but apparently after the time provided for in the Commission's regulations.¹¹

Under these circumstances, and in light of the *de minimis* amount at issue, and in furtherance of the Commission's priorities relative to other matters pending on the Enforcement docket, the Commission exercises its prosecutorial discretion and dismisses the allegations pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).

⁸ *United States v. Kanchanalak*, 192 F.3d 1037, 1049 (D.C. Cir. 1999) (concluding that the Commission has consistently interpreted 2 U.S.C. § 441e (now 52 U.S.C. § 30121) as applicable to federal, state, and local elections).

⁹ See 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(a)(4), (g). The Commission's regulations provide that "knowing" acceptance of a foreign national contribution in violation of the Act includes circumstances in which a person is "aware of facts that would lead a reasonable person to inquire whether the source of funds solicited, accepted or received is a foreign national, but the person failed to conduct a reasonable inquiry."

11 C.F.R. § 110.20(a)(4)(iii). Here, the Respondents admit that the contribution check bore a Mexican address, which likely would have led a reasonable person to inquire whether the contributions came from a foreign national.

¹⁰ IBS did not respond to the Complaint. See *supra*, footnote 2, Texas Secretary of State Certificate of Fact.

¹¹ See 11 C.F.R. § 103.3(b)(2).